

REMARKS/ARGUMENTS

Claims 1-37 are pending in the application. Reconsideration is requested in view of the above amendments and the following remarks.

APPLICANT'S RCE FILING

Applicant has filed an RCE with the present amendment to continue the prosecution of the application.

APPLICANT'S CLAIM AMENDMENTS

Applicant has reviewed the final office action of October 8, 2009 and thanks the Examiner for his thorough examination and response to the Applicant's previous remarks. Applicant has amended claim 1 to more particularly articulate the features that Applicant referred to in the prior response. Namely, that the present invention operates at the streams level, where one or more streams may be handled.

Claim 1 now recites that the claimed apparatus for processing code that comprises at least one electronic device component is for intercepting, examining and controlling code that is being communicated as a code stream on a communications channel. As Applicant previously pointed out, the present invention is distinguishable over the cited art applied in the rejection because Applicant's invention relates to handling a code stream, and multiple streams. Claim 1 also has been amended to more particularly recite the feature that multiple code streams may be handled multiple code streams, such as, for example instant messaging, as well as sendmail (for example) where both are over a network card communication channel. Claim 1 recites wherein said apparatus is

configurable to process multiple code streams created when more than one communications channel is opened.

The other independent claims, namely claims 9, 11, 17, 18, 34, 35 and 36, have been amended to recite that the code is communicated as a code stream.

For these reasons, the present invention, as recited in the above amended claims, is distinguishable over the cited art, and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

THE CLAIM OBJECTIONS

Claims 9, 11 and 17 were objected to, and, in accordance with the Examiner's suggestions, have been amended to clarify the wording.

THE 103(a) REJECTION OVER TSO AND ENGEL

Claims 1-4, 6-8, 10, 11, 18-19, 21-25, 34 and 36 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,088,803 ("Tso") in view of US Patent application Engel. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

The Applicant's invention is not disclosed or suggested by the cited references and should be patentable. The Examiner contends that Tso discloses a method and apparatus including a protocol parser, a protocol scanner, and a proscribed code scanner including a scanning means and an indicator whereby the protocol parser intercepts instant messaging or peer-to-peer code on a communications channel and transmits said code to said proscribed code scanner through said protocol scanner (referring to col. 6,

lines 10-24 of Tso and contending that the parser performs the functions of both the protocol parser and the protocol scanner).

Previously, the Examiner, on pages 6-7 of the May 13, 2005 Office Action appears to acknowledge distinctions made by Applicant, but considers the claim language to not include the specific description referenced to by Applicant. Applicant previously amended each of the independent claims in order to recite that the protocol parser discriminates among different protocols.

Applicant's claims also recite that the protocol parser accepts instant messaging or peer-to-peer code on a communications channel and transmits or transfers the code... (See claims 1-17). Claims 18-37 also recite intercepting instant messaging or peer-to-peer code on a communications channel.

Applicant previously pointed out that Tso was misplaced because the present invention relates to handling streams (code at the streams level), and Tso relates to transcoding.

Applicant also previously pointed out that Applicant's claims refer to a communications channel, whereas Tso refers to a server/network communications link 16. Applicant also noted that it is one thing to intercept the stream, as the Applicant's invention claims and does, but another thing to transcode content based on a predetermined selection criterion (see Tso col. 6 lines 42-43).

Tso merely discloses a parser for use in connection with HTTP. One would not gain from Tso's HTTP disclosure to implement a protocol parser in the first place. Again, that only comes from Applicant's current and priority disclosures (and not the cited art).

Tso does not mention using a parser to parse protocols on top of the transport layer, as Applicant discloses and claims.

In response to the prior office action of October 8, 2009, Applicant has amended the claims to more particularly recite the distinguishing feature of the code that is being communicated as a code stream on a communications channel. This is what Applicant previously pointed out in relation to Tso, and in asserting Tso's failure to disclose or suggest the present invention.

According to embodiments of the present invention, the present invention relates to and claims interception of instant messaging on a communications channel, which, as now amended refers to and recites code that is being communicated as a code stream. The protocol parser according to the Applicant's present invention is placed so as to intercept code passing through the communications channel. The intercepted code is then sent by the parser to a protocol scanner. In addition, Applicant's invention provides that it may operate by using a protocol parser that may be placed on a client, server, a peer, and/or other system components. (See specification [0024].)

Tso, on the other hand, discloses a transcoding server 34 which is intermediate between the network client 12 and the network 18. Tso appears to relate to downloading of files, whereas Applicant's invention recites and claims handling a communications stream on a communications channel.

As Applicant previously pointed out, it is one thing to intercept the stream as the Applicant's invention claims and does, but another thing to transcode content based on a predetermined selection criterion (see Tso col. 6 lines 42-43). In particular, Tso merely

discloses a parser for use in connection with HTTP. Tso does not mention using a parser to parse protocols on top of the transport layer, as Applicant discloses and claims.

Tso, on the other hand, discloses a transcoding server 34 which is intermediate between the network client 12 and the network 18. Tso appears to relate to downloading of files, whereas Applicant's invention recites handling a communications stream on a communications channel.

Applicant's present invention is further distinguishable, and provides a further reason why one of ordinary skill in the art would not have been led to combine the Tso and Engel disclosures. Applicant, in his specification, recites the following features:

[0064] It should be noted that more than one instance of the embodiment will be utilized if the user has more than one application running and/or more than one communications channel opened. ***For example, if a user opens an instant messaging application over a network card communication channel as well as a sendmail application over a network card communication channel two code streams will be created, both using TCP. Both will be intercepted*** according to the process of the preferred embodiments. Moreover, if channels are opened using other protocols at the Transport layer, or other protocols at other layers, embodiments of the present invention can be used to intercept those communications, with an appropriate kernel module.

[0065] Of course, any configuration parameters are not limited to predetermined parameters. For example, the interception parameters of the intercept module, protocol scanner and the proscribed code scanner may be configured in various ways in various embodiments. Moreover, the user may configure and reconfigure the parameters as desired. In yet other embodiments, there may need to be no interception parameters-interception can be turned off--or no predetermination of interception parameters. For example, a user may decide to intercept all code, or the embodiment could request parameters as code is being transferred or could request an interception decision as the code is being transferred. Of course, in yet other embodiments, the choice of predetermined, non-predetermined, or no interception parameters, and what parameters to change could be offered to either or both end-users or network administrators.

[0066] Of course, other embodiments may be configured differently. For example the protocol scanner may be written as one or more STREAMS modules, and the connections to and from the intercept module and the proscribed code scanner would be modified appropriately.

Claims 1, 11, 18, 34 and 36, now recite the communications as a code stream on a communications channel. For the above reasons, the invention is not taught, suggested or disclosed by the cited references. The claimed features of the present invention are neither taught nor suggested by Tso, even if the combination were made with Engel.

Applicant's presently claimed invention specifically recites the code stream, and further recites, in claim 1, that the invention is configurable to process multiple code streams created when more than one communications channel is opened. This is a further distinction over the references.

Engel is cited for a disclosure which refers to a protocol selection pop-up. Applicant's invention refers to a method and apparatus which can handle multiple streams, as amended claim 1 now recites. Tso is not directed to streams, but rather appears to be for file downloads, for example, a data object to be downloaded. Applicant's invention refers to the ability to handle more than one communications channel opened, such as, for example, an instant messaging application over a network card communication channel as well as a sendmail application over a network card communication channel. Here, Applicant's invention can handle the two code streams that will be created (both using TCP), and, accordingly, the code streams will be intercepted according to the process of the preferred embodiments.

For the above reasons, the present invention is not disclosed or suggested by the cited references.

THE 103(a) REJECTION OF CLAIM 9

Claim 9 stands rejected under 35 USC 103(a) as being unpatentable under the modified Tso et al. reference and Engel system, as applied above, and further in view of U.S. 6,771,949 (Corliss). This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection are hereby respectfully requested.

Applicant's invention is distinguishable over the cited references. Claim 9 has been amended to more particularly distinguish the present invention by reciting that the code is “code that is being communicated as a code stream on a communications channel, [and] . . . whereby said protocol parser intercepts short messaging code from said code stream on a communications channel and transmits said code for review . . .”

For the same reasons as those set forth above, the present invention, as recited in amended claim 9, would not have been obvious over the cited references.

The Office Action admits that, with regard to claim 9, Tso and Engel, even if combined together, still fail to disclose that messaging code is short messaging code. The Examiner, however, attempts to fill this deficiency by combining a further reference, namely Corliss. However, even Corliss fails to disclose the presently claimed invention. Accordingly, Applicant's invention, as recited in claim 9, is not obvious in view of the cited references.

As Applicant previously pointed out, the reference to short messages appears unrelated to Tso and Engel and does not supply any reason or motivation to modify Tso and Engel in the manner suggested in the Office Action.

In addition, Corliss was issued after Applicant's filing date, and therefore, would not have rendered the invention obvious.

For the above reasons, and these additional reasons, claim 9, is not obvious in view of the cited references. Reconsideration and a withdrawal of the rejection with respect to claim 9 is respectfully requested.

THE 103(a) REJECTION OVER TSO, ENGEL AND JOHNSON

Claims 5, 12, 15-17, 20, 26-29, 32-33, and 35 stand rejected under 35 USC 103(a) as being unpatentable over modified Tso et al. and Engel as applied to claims 1 and 18 above and further in view of U.S. Patent 5,682,428 ("Johnson"). This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection are hereby respectfully requested.

The Examiner acknowledges that even the combination of Tso et al. and Engel would still fail to meet the Applicant's present invention in that these references fail to disclose decrypting the code. The Examiner therefore applies an additional reference, namely Johnson, which the Office Action considers to disclose decrypting data (citing to col. 27, lines 23-56). The Examiner considers that it would have been obvious to use Johnson's method of decryption in the modified Tso et al. and Engel system of code scanning and the motivation would have been to be able to reference and manipulate previously encrypted data.

First, for the same reasons as those set forth above, Applicant submits that the rejection of the claims with the further reference of Johnson still fails to teach, suggest or disclose the Applicant's present invention.

Second, reference to the Johnson citation discloses files, rather than a communications stream, which is now recited in the amended claims. Johnson does not mention a communications stream, but rather seeks to utilize a file identification code to decrypt a file.

For the above reasons, and for these additional reasons, the cited references fail to teach, suggest or disclose the Applicant's claimed invention.

THE SECTION 103(a) REJECTION OVER TSO, ENGEL, JOHNSON AND ELGAMAL

Claims 13-14 and 30-31 stand rejected under 35 USC 103(a) as being unpatentable over modified Tso et al., Engel and Johnson as applied to claims 12 and 26 above and further in view of U.S. Patent 6,389,534 ("Elgamal"). This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection are hereby respectfully requested.

For the same reasons set forth above, the Applicant's invention should also be patentable over the combination of Tso and Johnson, and even with the further combination of Elgamal.

For these reasons, reconsideration and a withdrawal of the rejection is respectfully requested.

THE 103(a) REJECTION OF CLAIM 37 OVER TSO, ENGEL,
JOHNSON AND COGGER

Claim 37 stands rejected under 35 U.S.C. 103(a) as being obvious over the modified US Patent 6,088,803 ("Tso"), Engel and Johnson, as applied to claim 30, and the further reference of US Patent Application US 20020087383. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

Accordingly, the rejection of claim 37 should be withdrawn.

For the above reasons, Applicant's invention is distinguishable over the cited prior art and should be patentable.

Accordingly, the rejection of claim 37 should be withdrawn.

The Double Patenting Rejections:

Claims 1-8, 10-12, 15-29 and 32-36 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. 7,389,540 in view of Engel. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

For the above reasons, Applicant submits that Engel fails to disclose the present invention, and therefore, the rejection should be traversed. In the event that the double patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.

Claim 9 stands rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. 7,389,540 in view of Moore, et

al. – The Office Action likely is referring to Engel-- and further in view of Corliss. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

For the above reasons, Applicant submits that Moore/Engel and Corliss fail to disclose or suggest the present invention, and therefore, the rejection should be traversed. In the event that the double patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.

Claims 13, 14, 30 and 31 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. 7,389,540 in view of Moore, et al. (again likely Engel is meant by the Office Action) in further view of Elgamal. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

For the above reasons, Applicant submits that Moore/Engel and Elgamal fail to disclose or suggest the present invention, and therefore, the rejection should be traversed. In the event that the double patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.\

Claim 37 stands rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. 7,389,540 in view of Engel, Elgamal and Cogger. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

For the above reasons, Applicant submits that Engel, Elgamal and Cogger fail to disclose the present invention, and therefore, the rejection should be traversed. In the

event that the double patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.

Claims 1 – 8 and 10-36 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. 7,404,212 in view of Engel. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

For the above reasons, Applicant submits that Engel fails to disclose the present invention, and therefore, the rejection should be traversed. In the event that the double patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.

Claim 9 stands rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. 7,404,212 in view of Engel and further in view of Corliss. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

For the above reasons, Applicant submits that Engel and Corliss fail to disclose or suggest the present invention, and therefore, the rejection should be traversed. In the event that the double patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.

Claim 37 stands rejected on Claim 37 stands rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15

of U.S. 7,404,212 in view of Engel, Elgamal and Cogger. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

For the above reasons, Applicant submits that Engel, Elgamal and Cogger fail to disclose the present invention, and therefore, the rejection should be traversed. In the event that the double patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.

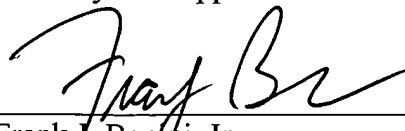
For the above reasons, Applicant's invention is distinguishable over the cited prior art and should be patentable.

If further matters remain, the Examiner is invited to telephone the Applicant's undersigned representative to discuss them.

If an extension of time is required, the Commissioner is requested to consider this a request for a petition for the appropriate extension of time.

The Commissioner is authorized to charge any additional fees which may be required to Patent Office Deposit Account No. 05-0208.

Respectfully submitted,
HARDING, EARLEY, FOLLMER & FRAILEY
JOHN F. A. EARLEY III
FRANK J. BONINI, JR.
Attorneys for Applicant



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Frank J. Bonini, Jr.
Registration No. 35,452
P.O. Box 750
Valley Forge, PA 19482-0750
Telephone: (610) 935-2300
Facsimile: (610) 935-0600